

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Esme Trontz	Team: Squad #7	CCRB Case #: 202003354	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/14/2020 1:35 AM	Location of Incident: Webster Avenue and Mosholu Parkway	Precinct: 52	18 Mo. SOL 11/14/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 05/17/2020 5:09 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/17/2020 5:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Frank Aliffi	00234	939856	052 PCT
2. POM Garry Tuma	20648	959317	052 PCT
3. POM Christophe Montera	07819	961961	INT CIS
4. POM Anthony Saline	12924	962081	PBBX SU

Officer(s)	Allegation	Investigator Recommendation
A.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi stopped the vehicle in which § 87(2)(b) and an individual were occupants.	
B.POM Anthony Saline	Abuse: Police Officer Anthony Saline stopped the vehicle in which § 87(2)(b) and an individual were occupants.	
C.POM Garry Tuma	Abuse: Police Officer Garry Tuma stopped the vehicle in which § 87(2)(b) and an individual were occupants.	
D.POM Christophe Montera	Abuse: Police Officer Christophe Montera stopped the vehicle in which § 87(2)(b) and an individual were occupants.	
E.POM Anthony Saline	Abuse: Police Officer Anthony Saline failed to obtain language interpretation services for an individual.	
F.POM Christophe Montera	Abuse: Police Officer Christophe Montera searched § 87(2)(b)	
G.POM Anthony Saline	Abuse: Police Officer Anthony Saline searched § 87(2)(b)	
H.POM Anthony Saline	Abuse: Police Officer Anthony Saline searched the vehicle in which § 87(2)(b) and an individual were occupants.	
I.POM Garry Tuma	Abuse: Police Officer Garry Tuma failed to provide § 87(2)(b) with a business card.	
J.POM Garry Tuma	Abuse: Police Officer Garry Tuma failed to provide § 87(2)(b) with a business card.	
K.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi failed to provide an individual with a business card.	

Officer(s)	Allegation	Investigator Recommendation
L.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi failed to provide § 87(2)(b) with a business card.	
M.POM Christophe Montera	Abuse: Police Officer Christophe Montera failed to provide § 87(2)(b) with a business card.	
N.POM Christophe Montera	Abuse: Police Officer Christophe Montera failed to provide § 87(2)(b) with a business card.	
O.POM Anthony Saline	Abuse: Police Officer Anthony Saline failed to provide § 87(2)(b) with a business card.	
P.POM Anthony Saline	Abuse: Police Officer Anthony Saline failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online portal on May 17, 2020 on behalf of himself and his friend, § 87(2)(b).

On May 14, 2020, at approximately 1:35 a.m., § 87(2)(b) and § 87(2)(b) were in the back seat of a cab going north on Webster Avenue in the Bronx. As they passed Mosholu Parkway, an unmarked police vehicle pulled the cab over (**Allegations A-D: Abuse of Authority- Vehicle Stop,** § 87(2)(g) Sergeant Frank Aliffi and Police Officers Anthony Saline, Garry Tuma, and Christopher Montero, all from the 52nd Precinct Anti-Crime team, exited their vehicle and approached the cab. Police Officer Saline approached the driver, an unidentified female who primarily spoke Spanish, and did not obtain an interpreter for her (**Allegation E: Abuse of Authority- Failure to Obtain Language Interpretation Services,** § 87(2)(g) Police Officer Montero searched § 87(2)(b)'s person, and Police Officer Saline searched § 87(2)(b)'s person (**Allegations F and G: Abuse of Authority- Search of Person,** § 87(2)(g) Police Officer Saline then searched only the back seat area of the cab (**Allegation H: Abuse of Authority- Vehicle Search,** § 87(2)(g) No officer provided a business card to § 87(2)(b) or to § 87(2)(b) (**Allegations I-P: Abuse of Authority- RTKA,** § 87(2)(g) § 87(2)(g), § 87(4-b) § 87(2)(b) No one was arrested or issued a summons for this incident.

BWC footage from Police Officers Montero (Board Review #01), Saline (Board Review #02), Tuma (Board Review #03) and Sergeant Aliffi (Board Review #04) were obtained for this incident. They are attached in IAs #117-120, respectively, and are summarized in IA #121 (Board Review #05).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Frank Aliffi stopped the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation (B) Abuse of Authority: Police Officer Anthony Saline stopped the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation (C) Abuse of Authority: Police Officer Garry Tuma stopped the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation (D) Abuse of Authority: Police Officer Christophe Montero stopped the vehicle in which § 87(2)(b) and an individual were occupants.

Allegation (F) Abuse of Authority: Police Officer Christophe Montero searched § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Anthony Saline searched § 87(2)(b)

Allegation (H) Abuse of Authority: Police Officer Anthony Saline searched the vehicle in which § 87(2)(b) and an individual were occupants.

§ 87(2)(b) was interviewed by the CCRB via telephone on May 26, 2020 (Board Review #06).

§ 87(2)(b) was interviewed by the CCRB via telephone on November 20, 2020 (Board Review #07). Attempts to identify the driver of the cab and to obtain contact information for her were unsuccessful. Sergeant Aliffi was interviewed by the CCRB on February 5, 2021. Police Officer Saline was interviewed by the CCRB on March 26, 2021. Police Officer Montero was interviewed by the CCRB on April 14, 2021. Police Officer Tuma was interviewed by the CCRB on May 25, 2021.

It is undisputed that § 87(2)(b) and § 87(2)(b) rode in the back of a cab with license plate § 87(2)(b) (New York) in the early hours of May 14, 2020. § 87(2)(b) sat in the rear passenger seat and § 87(2)(b) sat in the rear driver seat. At approximately 1:35 a.m., they were pulled over by Sergeant Aliffi and Police Officers Saline, Montera, and Tuma at the corner of Webster Avenue and Mosholu Parkway in the Bronx. Police Officer Saline spoke with the driver, then spoke with § 87(2)(b) through the open rear window. He then asked § 87(2)(b) to step out of the vehicle and searched § 87(2)(b)'s person, including his pants and jacket pockets. Police Officer Montera similarly spoke with § 87(2)(b) through the open rear window, during which § 87(2)(b) told him he and § 87(2)(b) had been smoking marijuana. Police Officer Montera asked him to exit the car, after which he searched his person, including his sweatshirt pockets. The officers directed the passengers to the rear of the cab while the driver stayed in the car, and Police Officer Saline searched only the back seat area of the cab.

§ 87(2)(b) testified in his interview that he and § 87(2)(b) smoked marijuana prior to the incident. Neither § 87(2)(b) nor § 87(2)(b) knew why the cab was pulled over, and § 87(2)(b) testified that the cab driver did not commit any vehicle infractions prior to being pulled over.

Police Officers Saline, Montera, and Tuma testified that they pulled the cab over only because one of the taillights was broken. Sergeant Aliffi, in contrast, testified that one of the officers who he could not remember observed that neither of the passengers of the cab was wearing a seatbelt, and that the seatbelt violation was the only reason they pulled the cab over. Sergeant Aliffi could not remember observing that the rear passengers were not wearing seatbelts. Police Officer Saline is seen at 1:25 into his BWC footage telling the cab driver that her left taillight was out (Board Review #02). This portion of BWC did not refresh Sergeant Aliffi's recollection of seeing a broken taillight on the cab. All officers interviewed testified that upon approaching the vehicle, they smelled an odor of marijuana coming from the vehicle. Police Officer Tuma could tell that the odor was coming specifically from the backseat area, while the other officers either couldn't tell where it was coming from or believed it was from the entire cabin of the vehicle.

Police Officer Saline's BWC offers the best view of the back of the cab, from 00:21 to 00:27 into the footage (Board Review #02). As seen in the screenshot attached to IA #192, the video is not clear enough to show whether either of the taillights was out, but there appears to be red and white light emanating from both sides of the rear (Board Review #08). Neither Police Officer Saline nor Sergeant Aliffi was able to identify in the footage the evidence of the broken taillight, which they attested to the fact that the footage was too blurry.

§ 87(2)(b), § 87(2)(g)

At the time of the incident, *People v. Chestnut*, 43 A.D.2d 260 [1974] allowed officers to search a vehicle and its occupants if the officers smelled an odor of marijuana (Board Review #09).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Anthony Saline failed to obtain language interpretation services for an individual.

At 00:30 into his BWC footage, Police Officer Saline is seen saying, “License, registration and insurance, please,” to the driver, then repeating it when she does not respond (Board Review #02). At 00:40 she says, “Hablo espanol,” and Police Officer Saline says, “Licensio y registrar.” After the driver seems to give Police Officer Saline her ID, he continues to communicate completely in English. He says, “How’s your driver’s license, good?” No response can be heard from the driver. He then says, “Your rear left taillight is out...alright, thank you.” At 1:35 he says, “Thank you,” and the driver says, “mmmhmm.” Police Officer Saline again says, “your left rear brake light is out, okay? You gotta get that fixed. Alright? I’ll give you a warning today... uno momento.” She then says, “okay.” No officer, including Police Officer Saline, talks to the driver at any other point after this conversation.

Police Officer Saline testified that, because the driver’s first few words were in Spanish, he asked her if she spoke “un poquito” English. He explained to her that her brake light was out, and she said, “brake light,” and shook her head, which Police Officer Saline interpreted as her understanding what she was saying. He told her she had to get the light fixed to prevent a crash, and he believed that the driver understood that her taillight was out. He did not feel at any time that he needed to get an interpreter for her because it would have taken a while to get the interpreter and he did not want to keep her longer than he needed to. If he needed to obtain an interpreter, he would have used his department-issued phone to call language line. He did not have any conversation with any of his partners regarding needing to obtain an interpreter. He did not believe that the driver did not fully understand anything he said. He did not know whether any of his partners spoke Spanish but stated that he spoke very little. § 87(2)(b) testified that the driver did not seem to speak English well.

Neither Sergeant Aliffi nor Police Officer Montera was aware that the driver primarily spoke Spanish. Sergeant Aliffi testified that if he had been aware, he would have requested that a Spanish-speaking officer respond to the scene or would have used a translation application called “Translate” on his department-issued phone. Sgt. Aliffi’s understanding was the driver understood why she was pulled over. Sergeant Aliffi and Police Officer Montera both testified that they did not speak Spanish.

Patrol Guide Procedure 212-90 defines a Limited English Proficient (LEP) individual as a person whose primary language is not English and who is unable to effectively read, write, speak or understand English (Board Review #10). When a member of the service encounters an LEP person and requires the services of an interpreter, they must use Language Line or an interpreter (civilian or officer) to effectively communicate with the individual.

From the beginning of the interaction with Police Officer Saline, the driver indicated that she did

not fully understand him when he said, “license and registration,” and additionally stated that she spoke Spanish. § 87(2)(g)

Police Officer Saline testified that he told the driver to get her light fixed to prevent a crash, and used his discretion, as shown in his BWC, not to summons her, but rather to issue her a warning. § 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Garry Tuma failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Police Officer Garry Tuma failed to provide § 87(2)(b) with a business card.

Allegation (K) Abuse of Authority: Sergeant Frank Aliffi failed to provide an individual with a business card.

Allegation (L) Abuse of Authority: Sergeant Frank Aliffi failed to provide § 87(2)(b) with a business card.

Allegation (M) Abuse of Authority: Police Officer Christophe Montera failed to provide § 87(2)(b) with a business card.

Allegation (N) Abuse of Authority: Police Officer Christophe Montera failed to provide § 87(2)(b) with a business card.

Allegation (O) Abuse of Authority: Police Officer Anthony Saline failed to provide § 87(2)(b) with a business card.

Allegation (P) Abuse of Authority: Police Officer Anthony Saline failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) and § 87(2)(b) both testified that no officer offered either of them a business card during the incident. § 87(2)(b) added that § 87(2)(b) asked the officers for a card at the conclusion of the interaction but none of them responded.

Police Officer Tuma testified that after § 87(2)(b) and § 87(2)(b) got back into the taxi at the end of the interaction, he offered his business card through the rear passenger window. Neither passenger said they wanted the card but he did not remember if they said anything else. He could not remember whether either passenger indicated they had heard his offer. Police Officer Montera and Sergeant Aliffi both believed they heard Police Officer Tuma offer his card and likewise did not believe either occupant accepted. Police Officer Montera testified that he did not offer his card because he understood that only one officer needed to do so and he believed Police Officer Tuma had already offered his.

The moment Police Officer Tuma offered the card to the occupants is captured in his BWC footage from 6:00 to 6:08 during their brief conversation at the end of the incident (Board Review #03). At 6:05, he is heard saying quickly, “Have a good one, want a card?,” as he walked away from § 87(2)(b) and § 87(2)(b) who were sitting in the backseat of the cab. This statement is muffled and not clearly audible, in contrast to the rest of the audio on the BWC. Police Officer Tuma appears to be about two feet away from the occupants when he offered the card. No response can be heard from either occupant because he turned off his camera immediately after offering the card.

Police Officer Saline likewise testified that he offered his card to the occupants at the conclusion of the interaction. He stated in his interview that after the officers told the passengers they could get

back in the vehicle, Police Officer Saline said to both passengers, “Do any of you need a business card?” They refused to take the card, but he could not remember how they did so. He testified that the statement he made at the very end of his BWC footage was the moment he offered the card (Board Review #02). At 6:06, Police Officer Saline is already walking away from the cab; at 6:10, when he has almost returned to his marked vehicle, he makes an inaudible statement and turns off his camera. At the time he made this statement, which he testified was the moment he offered the card, he appears to be facing away from the cab from several feet away.

According to NYC Administrative Code 14-174, officers must offer a business card to any individual with which they conduct a law enforcement activity, such as a stop, at the conclusion of any such activity that does not result in an arrest or summons (Board Review #11).

§ 87(2)(b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) (Board Review #13) and § 87(2)(b) (Board Review #14) have been parties.
- Police Officer Saline has been a member-of-service for five years and has been named a subject in eight CCRB complaints and eighteen allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Tuma has been a member-of-service for six years and has been named a subject in four CCRB complaints and nine allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Montera has been a member-of-service for five years and has been named a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)
- Sergeant Aliffi has been a member-of-service for fifteen years and has been named a subject in ten CCRB complaints and 34 allegations, of which two were substantiated.

